

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA DIVISION

TENTATIVE RULINGS

EVENT DATE: 05/13/2015
JUDICIAL OFFICER: Kevin DeNoce

EVENT TIME: 08:20:00 AM

DEPT.: 43

CASE NUM: 56-2014-00461060-CU-NP-VTA

CASE TITLE: P.Q.L INC VS REVOLUTION LIGHTING TECHNOLOGIES INC

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Non-PI/PD/WD tort - Other

EVENT TYPE: Motion - Other (CLM) - PQL -Mtn for trade secret Protective Order

CAUSAL DOCUMENT/DATE FILED: Motion - Other, 04/20/2015

With respect to the below scheduled tentative ruling, no notice of intent to appear is required. If you wish to submit on the tentative decision, you may submit a telefax to Judge DeNoce's secretary, Hellmi McIntyre at 805-662-6712, stating that you submit on the tentative. Do not call in lieu of sending a telefax, nor should you call to see if your telefax has been received. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. This case has been assigned to Judge DeNoce for all purposes.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

The court's tentative ruling is as follows:

Grant the request for judicial notice of Andy Sreden's declaration in support of Plaintiff's *ex parte* application for a temporary restraining order.

Overrule the evidentiary objections to the declarations of Randall Wheeler and Andy Sreden.

Grant the Motion for a Protective Order without the "attorneys' eyes only" limitation (strike the language from Proposed Order regarding "attorneys' eyes only")

Grant the Motion for the Record to be filed under seal.

Discussion:

A party claiming misappropriation of a trade secret under the Uniform Trade Secrets Act must identify the alleged trade secrets "with reasonable particularity" before commencing discovery relating to the trade secrets. (CCP § 2019.210; *Advanced Modular Sputtering, Inc. v. Sup.Ct. (Sputtered Films, Inc.)* (2005) 132 Cal. App. 4th 826, 834–835.) Plaintiff, as the moving party, bears the burden of establishing that a protective order is appropriate. (*Standish v Superior Court* (1999) 71 Cal.App.4th 1130, 1144-45.) If the complaint does not describe the trade secret adequately, plaintiff must provide a separate statement containing the requisite description. Before serving the separate statement, plaintiff may seek a protective order under *Civil Code* section 3426.5. *Civil Code* section 3426.5 provides:

"In an action under this title, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval."**Evidence Code section 1060 provides: "If he or his agent or employee claims the** privilege, the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice."**Evidence Code** section 1061(b) provides the procedure for assertion of trade secret privilege: **"The movant shall, by a preponderance** of the evidence, show that the issuance of a protective order is proper. The court may rule on the request without holding an evidentiary hearing. However, in its discretion, the court may choose to hold an in camera evidentiary hearing concerning disputed articles with only the owner of the trade secret, the people's representative, the defendant, and defendant's counsel present. If the court holds such a hearing, the parties' right to examine witnesses shall not be used to obtain discovery, but shall be directed solely toward the question of whether the alleged trade secret qualifies for

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protection."

Plaintiff has met the burden of establishing that a protective order is appropriate. A customer list may be considered a trade secret where the identity of customers itself has economic value and the owner has made reasonable efforts to preserve its secrecy. (See *Civ.C. § 3426.1(d)*.) The declaration of Andy Sreden provides that he is the President, CEO, and sole shareholder of Plaintiff PQL, Inc. The business was a startup and what makes it unique is the company's specialized knowledge, gained through years of experience, effort and education as a result of extensive expenditures of time, money and effort. The information is not generally known in the trade. The information would not be replicated due to the "very nature of the information and the process of PQL." The trade secrets are: "Client list, vendor list, supplier list, pricing and expense model, profit margin analysis, marketing analysis, "energy analysis" software, Enterprise Resource Planning software, Customer Retention Management software and strategic plan and, technology for select products and future products." **The question is, what is reasonable protective order in this case, and specifically,** is the "attorneys' eyes only" provision reasonable? Plaintiff is correct that there are cases that have held that it is appropriate in certain circumstances to limit disclosure to attorneys only and not to the underlying client. (See, *Moskowitz v. Superior Court* (1982) 137 Cal.App.3d 313, 318-19; *Nutratech, Inc. v. Syntech Int'l, Inc.* (C.D. Cal. 2007) 242 F.R.D. 552, 554-55.) However, unlike *Moskowitz*, *supra*, this is neither an attorney malpractice case, nor a case dealing with personal financial affairs. Plaintiff has not met its burden of establishing why an additional level of restriction is necessary in light of the expense and prejudice that Defendants may face as a result of the requested "attorneys' eyes only" restriction. Such a restriction may interfere with the Defendants ability consult with counsel and amongst themselves as to aspects of the case. Also, "non-attorney eyes" have already seen the documents. The added restriction would make Defendants discussions with each other and with counsel more burdensome without enough of a justification. "[W]here the financial information goes to the heart of the cause of action itself (as opposed to only the punitive damages portion), a litigant should not be denied access so easily." (*GT, Inc. v. Superior Court* (1984) 151 Cal.App.3d 748, 754.)